



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

DEC 09 2014

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number:** 7005 3110 0000 5964 3563

Mayor Noam Bramson  
City of New Rochelle  
515 North Avenue  
New Rochelle, New York 10801

Re: **Order to Show Cause**  
Administrative Order CWA-02-2015-3017  
City of New Rochelle  
SPDES Permit No. NYR20A207


Dear Honorable Noam Bramson:

The United States Environmental Protection Agency ("EPA"), Region 2, has made a finding that the City of New Rochelle located at 515 North Avenue, New Rochelle, New York ("Respondent") is in violation of the Clean Water Act (33 U.S.C. § 1251 et seq.) ("CWA" or "Act") for its failure to comply with and meet the compliance schedule required under the Administrative Order, Docket No. CWA-02-2013-3022, issued on January 14, 2013, pursuant to Sections 309 and 308 of the CWA. Enclosed are two (2) originals of this Order to Show Cause ("Order") issued pursuant to Section 309 of the CWA, which detail the findings. This Order provides Respondent with an opportunity to demonstrate to EPA why it should not recommend the commencement of a civil and/or criminal action for penalties as provided for by Section 309 of the CWA, 33 U.S.C. § 1319.

Please acknowledge receipt of this Order by signing one copy of an original Order on the acknowledgement page and returning the acknowledgement page along with one of the original copies of the Order by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the Respondent to civil/criminal penalties pursuant to Section 309 of the CWA and subject the Respondent to ineligibility for participation in work associated with Federal contracts, grants or loans.

If you have any questions regarding this Order, please contact Mr. Douglas McKenna, Chief, Water Compliance Branch, at (212) 637-4244.

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Mr. Dan Peluso, Dolph Rotfeld Engineering (w/enclosure)  
Mr. Joseph DiMura, NYSDEC (w/enclosure)

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

City of New Rochelle  
515 North Avenue  
New Rochelle, NY 10801

**SPDES Permit No. NYR20A207**

Proceeding pursuant to Section 309(a) of  
The Clean Water Act, 33 U.S.C. §1319(a)

**RESPONDENT**

**ORDER TO  
SHOW CAUSE**

CWA-02-2015-3017

The following Order to Show Cause (“Order”) is issued pursuant to Section 309(a)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA Region 2, and since further redelegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.

**A. Legal Authority**

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.
3. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation (“NYSDEC”) is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a New York State Pollutant Discharge Elimination System (“SPDES”) permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a

4. navigable water of the United States.
5. "Municipality" is defined by Section 502(4) of the CWA, 33 U.S.C. § 1362(4), to include a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
6. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5) to include an individual, corporation, partnership, association or municipality.
7. Municipal Separate Storm Sewer System ("MS4") is defined by 40 C.F.R. § 122.26(b)(8) to include a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by State law)...that discharges into waters of the United States; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works.
8. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6) to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
9. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) to include the waters of the United States.
10. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12) to include any addition of any pollutant to navigable waters from any point source.
11. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14) to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
12. "Storm water" is defined by 40 C.F.R. § 122.26(b)(13) to include storm water runoff, snow melt runoff, and surface runoff and drainage.
13. "Permit" means the NYSDEC Discharge Permit defined by the permit number NYR20A207. The Permit was issued by the DEC, pursuant to Section 402 of the CWA, and became effective on May 1, 2010 and will expire on April 30, 2015.
14. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) sets forth the requirements for the discharge of storm water, including discharges of storm water from Municipal Separate Storm Sewer Systems.

15. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides that whenever it is necessary to carry out the objectives of the CWA, including determining whether or not a person/agency is in violation of Section 301 of the CWA, 33 U.S.C. § 1311, the EPA shall require the submission of any information reasonably necessary to make such a determination.
16. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator to issue an order requiring compliance or commence a civil action when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, Section 308(a) of the CWA, 33 U.S.C. § 1318(a), or in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

## **B. Findings**

1. The City of New Rochelle ("New Rochelle" or "Respondent"), is organized and exists under the laws of the State of New York, and is located in Westchester County, New York. New Rochelle has authority and control over the municipal separate storm sewer system within its boundaries.
2. The City of New Rochelle is a "municipality" and "person" within the meaning of Sections 502(4) and 502(5) of the CWA, 33 U.S.C. §§ 1362(4) and 1362(5).
3. At all relevant times, Respondent discharged and continues to discharge "pollutants" within the meaning of Sections 502(6) and 502(12) of the CWA, 33 U.S.C. §§ 1362(6) and 1362(12), from the New Rochelle municipal separate storm sewer system through "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14) into New Rochelle Harbor, a "navigable water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
4. Respondent applied for and was issued SPDES Permit No. NYR20A207 for the MS4 ("the MS4 permit") under Section 402(p) of the CWA, 33 U.S.C. § 1342(p). An MS4 General Permit was issued by NYSDEC on March 10, 2003, expired March 9, 2008, and was administratively extended until the issuance of a new general permit on May 1, 2008. At all relevant times, Respondent was authorized to discharge from all portions of the MS4 owned or operated by the City of New Rochelle, to waters of the United States, only in accordance with New Rochelle's Storm Water Management Program, specific terms and conditions of the MS4 permit, and associated Storm Water Discharge Regulations set forth in 40 C.F.R. § 122.26. Respondent is required to continue permit coverage under GP-0-10-002, which became effective May 1, 2010, and expires April 30, 2015. In accordance with Part IV.D., covered entities authorized under GP-0-08-002 shall continue to fully implement their SWMP, unless otherwise stated.
5. EPA conducted compliance inspections of Respondent's MS4 system on May 9 and 17, 2007, and conducted wet weather sampling inspections of the outfalls within New Rochelle on April 28, 2008, and March 18, 2009. Based on the findings of these inspections, EPA issued Administrative Order, CWA-02-2009-3002 on February 13,

2009 (“the 2009 AO”), pursuant to Sections 309 and 308 of the Act, ordering Respondent to locate and eliminate sources of illicit discharges to the storm drain collection system in the City of New Rochelle by November 2010. The work required as part of the 2009 AO included cleaning, storm and sanitary drains, sampling, testing, and remediation. The 2009 AO further required the repair of leaking sanitary sewers based on the illicit discharge detection elimination investigation, televising storm drains, and sampling to prioritize the storm drain sub-systems. Additionally, the 2009 AO required the submission of semi-annual progress reports and a final report detailing all activities taken to come into compliance.

6. On April 27, 2010, Respondent requested an extension of time from November 2010 until March 2013, to complete the work required by the 2009 AO.
7. On August 31, 2010, EPA issued Administrative Order, CWA-02-2010-3051 (“the 2010 AO”), extending the November 2010 compliance schedule to March 31, 2013, in accordance with Respondent’s request.
8. On January 3, 2013, Dolph Rotfeld Engineering, P.C., consultant for the City of New Rochelle, submitted another request to extend the schedule to comply with the terms of the 2009 AO due to the impacts of Hurricane Sandy, until December 31, 2013.
9. On January 14, 2013, EPA issued Administrative Order, CWA-02-2013-3022 (“the 2013 AO”) again granting Respondent’s request for a revised schedule to comply with the terms of the 2009 AO, until December 31, 2013.
10. The United States Postal Service verified, via signed certified mail return receipt, that the 2013 AO was received by Respondent on February 4, 2013.
11. To date, Respondent has failed to comply with any of the ordered provisions in the 2013 AO and/or request another extension of time.
12. Therefore, on the basis of the findings cited in the paragraphs above, Respondent is in violation of Sections 309 and 308 of the CWA.

### **C. Ordered Provisions**

Based on the Findings of Violation set forth above, and pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to take the following actions:

1. Immediately upon receipt of the original copies of this Order, a responsible official of the City of New Rochelle shall complete and sign one of the original Orders on the acknowledgement page and return the acknowledgement page along with one of the originals of the Order by certified mail or its equivalent to the Chief, Water Compliance Branch, Division of Enforcement and Compliance Assistance at the address below.

2. A responsible official of the City of New Rochelle, on January 14, 2015, at 1:00 PM, shall appear at the following address to show cause before the Regional Administrator or her designee, why EPA should not recommend the filing of a complaint for the commencement of civil and/or criminal penalties as provided for by Section 309 of the CWA, 33 U.S.C. § 1319:

U.S. Environmental Protection Agency – Region 2  
Water Compliance Branch  
290 Broadway, 20th Floor  
New York, New York 10007-1866  
Contact: Mr. Douglas McKenna, Chief  
Water Compliance Branch (212) 637-4244

#### **D. General Provisions**

1. This order does not constitute a waiver from compliance with or a modification of the effective terms and conditions of the CWA, its implementing regulations, which remain in full force and effect. This ORDER is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of an Administrative Order shall not be deemed an election by EPA to forgo any civil or criminal actions that would seek penalties, fines or other appropriate relief under the CWA.
2. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to (1) civil penalties up to \$37,500 per day for each violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).
3. Respondent may seek federal judicial review of the CWA Section 309(a)(3) Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
4. The terms of this Order shall be effective and enforceable against Respondent upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: December 9, 2014

Signed: \_\_\_\_\_

Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

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**SPDES Permit No. NYR20A207**

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**RESPONDENT**

**ORDER TO  
SHOW CAUSE**

**CWA-02-2015-3017**

**ACKNOWLEDGEMENT OF RECEIPT OF  
ORDER TO SHOW CAUSE**

I, \_\_\_\_\_, an officer of the City of New Rochelle with the  
title of, \_\_\_\_\_, do hereby acknowledge the receipt of a copy of the  
ORDER TO SHOW CAUSE, CWA-02-2015-3017.

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_